

AGENDA: March 23, 2004

4.3

CATEGORY: Consent

DEPT.: City Manager

TITLE: Cable Television Franchise Renewal
Process

RECOMMENDATION

Adopt A RESOLUTION COMMENCING A REVIEW OF CABLE OPERATOR PAST PERFORMANCE AND ASSESSMENT OF FUTURE CABLE-RELATED NEEDS AND INTERESTS; PROVIDING FOR SATISFACTION OF CABLE ACT REQUIREMENTS TO THE EXTENT APPLICABLE; AND PROVIDING FOR ACTIONS WITH RESPECT TO CABLE FRANCHISE RENEWAL NEGOTIATIONS, to be read in title only, further reading waived.

FISCAL IMPACT

There is no fiscal impact directly associated with the approval of the above-listed recommendation.

Staff will seek reimbursement of expenses related to the renewal of the City's cable television franchise as part of the City's approval of a new cable franchise. Staff has obtained similar reimbursements in the past from the cable operator for expenses incurred by the City for its review and consent to changes of control of the City's cable franchise. Although the City's franchise holder has agreed to reimbursements in the past, reimbursements for this renewal process are not guaranteed.

A request for a \$40,000 appropriation has been included in the proposed FY 2004-05 budget to provide initial funding for legal and other specialized consultant services that may be required during the franchise renewal process until a reimbursement agreement can be reached.

BACKGROUND AND ANALYSIS

Cable television operators are required by Federal, State and local law to obtain franchises from the local governments they operate in for the operator's use of the public rights-of-way in the provision of cable television services. As far as the City is aware, UACC-Midwest, Inc. currently holds the cable television franchise for the City of Mountain View. This franchise is scheduled to expire in 2006.

On December 22, 2003, the City of Mountain View received a letter from Comcast Communications, Inc. (Comcast) requesting the City commence a formal renewal proceeding of the City's cable television franchise pursuant to Section 626 of the Federal Cable Act (Attachment 1).

Under Federal law, the renewal of the cable television franchise can be conducted through either a formal or informal process. The formal and informal processes can be and usually are conducted simultaneously. The formal process can be terminated at any time if the parties reach agreement informally through negotiations. In its letter, Comcast indicated its preference to reach a renewal agreement through informal negotiations.

As required by the Federal Cable Act, 47 USC §546(a), the City must commence formal renewal proceedings within six months of receiving proper written notice from "the cable operator" requesting a commencement of the renewal process. However, a substantial issue currently exists as to whether Comcast's December letter provided the City with adequate notice to commence the formal renewal process since it is not clear whether Comcast is "the cable operator" within the meaning of the Cable Act's renewal provisions. The City has not approved a transfer from UACC-Midwest, Inc. to Comcast.

The City could also activate the formal process itself, without a request from the cable operator. Because the formal renewal process can be very complex, time-consuming and expensive, it is not in the City's interest to proactively activate the process.

Under the formal process, the City would begin by examining the cable operator's past performance and identifying future cable-related needs and interests of the community. Conducting these activities will benefit the City even if the renewal process is ultimately completed through informal negotiation.

The attached resolution (Attachment 2) is crafted to allow the City Manager to commence activities typically associated with a formal renewal process such as examining past performance by the franchise holder and identifying the future cable-related needs of the community. The resolution also allows the City Manager to negotiate renewal issues informally.

Importantly, the resolution preserves the yet-to-be resolved notice issues and makes it clear that the City is not commencing the formal franchise renewal process of its own accord. The resolution provides that if proper notice is, or has been received, then the formal process will be deemed to have been commenced so that the City can comply with Federal law to conduct and complete a formal renewal process.

Staff will return to the City Council at a later date to provide an overview of the process it intends to follow during franchise renewal, including the steps it will undertake to assess the

franchisee's past performance, identify the future cable-related needs and interests of the community and determine if the cable franchise should be renewed.

ALTERNATIVES

1. The City could take no action. However, if Comcast's letter is deemed to have been adequate to commence a formal renewal process, the City could find itself in violation of Federal law.
2. The City could commence the formal process unilaterally, removing any question regarding the adequacy of the notice received from Comcast. This option is not in the City's interest at this time because of the unresolved issue regarding the adequacy of the notice and the expense that could be incurred by the City in the formal renewal process.

PUBLIC NOTICING

In addition to distributing copies of this report in accordance with the City's standard agenda posting requirements, copies of the report were sent to the Comcast official responsible for the City of Mountain View cable television franchise and the City's outside legal counsel for telecommunications issues.

Prepared by:

Approved by:

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LF/9/CAM
601-03-23-04M-1^

Attachments: 1. Comcast Letter
2. Resolution

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2004

A RESOLUTION COMMENCING A REVIEW OF CABLE OPERATOR PAST
PERFORMANCE AND ASSESSMENT OF FUTURE CABLE-RELATED NEEDS AND
INTERESTS; PROVIDING FOR SATISFACTION OF CABLE ACT REQUIREMENTS TO
THE EXTENT APPLICABLE; AND PROVIDING FOR ACTIONS WITH RESPECT TO
CABLE FRANCHISE RENEWAL NEGOTIATIONS

WHEREAS, on December 22, 2003, the City of Mountain View received a letter on Comcast Communications, Inc. letterhead requesting the City to commence the formal cable franchise renewal procedures required by the Cable Communications Policy Act of 1984, 47 USC §546 (the Cable Act); and

WHEREAS, Comcast Communications, Inc. also asked the City to engage in informal cable franchise renewal negotiations; and

WHEREAS, the provision of Federal law cited above requires the City of Mountain View to commence a formal renewal proceeding no later than six months after a proper written notice is received from "the cable operator," but Federal law does not require the City to commence such a proceeding if the notice is not properly submitted; and

WHEREAS, there is some question as to whether the notice received was sufficient as it came from Comcast Communications, Inc. and not from the City's current cable franchisee; and

WHEREAS, the City of Mountain View nonetheless finds that it would be in its interest to conduct a review of the cable franchise holder's past performance, identify future cable-related needs and interests of the community and determine if any franchise issues can be resolved through negotiation; and

WHEREAS, the City of Mountain View further finds that the review should be structured so that it satisfies the requirements of the Cable Act's renewal requirements if those have been properly activated by "the cable operator" as that term is used in the Cable Act's renewal provisions;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View that:

1. The City Manager is authorized to begin examining past performance by the cable franchise holder and identifying the cable-related needs and interests of the community. The City Manager is directed to provide the public with notice and an opportunity to participate in this process.
2. If 47 USC §546(a) is or has been properly and timely activated by the cable operator, Section 1 commences the proceeding required by the Cable Act. Otherwise, the process is not activated by Section 1.
3. The City Manager is authorized to take appropriate steps to determine whether franchise agreement issues can be resolved through negotiation and to take steps to negotiate as directed by the City Council of the City of Mountain View.

LF/9/RESO
601-03-23-04R-1^